

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STUART KROHNENGOLD, et al.

Plaintiffs,

v.

NEW YORK LIFE INSURANCE CO., et al.

Defendants.

Case No. 1:21-cv-01778

**DECLARATION OF MARIA MAUCERI IN SUPPORT OF DEFENDANTS’
MOTION TO DISMISS THE AMENDED COMPLAINT**

I, Maria Mauceri, hereby state and affirm as follows:

1. I am an employee of New York Life Insurance Company (together with its affiliates and subsidiaries, “NY Life”). I make this declaration in support of Defendants’ Motion to Dismiss the Amended Complaint. This declaration is based on my personal knowledge and my review of certain documents and files in the possession of NY Life, as well as records of the New York Life Insurance Company Employee Progress Sharing Investment Plan’s (“EPSI Plan”) and New York Life Insurance Company Agents Progress Sharing Plan’s (“APSI Plan’s,” collectively with the EPSI Plan, the “Plans,” and each a “Plan”) recordkeeper, Alight Solutions LLC (“Alight”).

2. I am the administrator of the Plans.

3. As the Plans’ administrator, I am familiar with the EPSI Plan and APSI Plan’s investment options and operational provisions, including those regarding the Plans’ default investment options and the automatic enrollment applicable to the EPSI Plan. I am also familiar

with documents maintained or generated by Alight that show the Plans' participants' investment elections and account balances, among other things.

4. Each Plan has a provision whereby participants in that Plan who do not select an investment option for their Plan account have 100% of their contributions to their Plan account automatically allocated to the Plan's default investment option. Each Plan's current default investment option is the Fixed Dollar Account.

5. Although each Plan currently uses the Fixed Dollar Account as their default investment option, the Plaintiffs'¹ EPSI Plan and APSI Plan account balances were never invested in the Fixed Dollar Account by virtue of the operation of the Plans' default investment option rules. Instead, the Plaintiffs affirmatively selected the Fixed Dollar Account for their EPSI Plan or APSI Plan accounts.

6. Stuart Krohnengold enrolled in the EPSI Plan in June 1989 and did so by his own choice. In June 1989, the EPSI Plan did not provide for any mechanism whereby NY Life employees could be enrolled in the EPSI Plan in any other way, such as through automatic enrollment. Mr. Krohnengold affirmatively elected to allocate a portion of his contributions to his EPSI Plan account balance to the Fixed Dollar Account until 2012, when he left NY Life's employ and ceased making contributions into the EPSI Plan.²

7. Wayne Antoine enrolled in the EPSI Plan in December 2013 and did so by his own choice. He was not automatically enrolled into the EPSI Plan. When Mr. Antoine enrolled in the EPSI Plan, he affirmatively chose to allocate 100% of his contributions to his EPSI Plan

¹ The Plaintiffs are Mssrs. Krohnengold, Antoine, Webber, Medici, Bendrihem, Gilbert, and Musni.

² Defendants are prepared to submit the Plaintiffs' EPSI Plan and APSI Plan quarterly account statements from January 1, 2015 to March 31, 2021 that show the Plaintiffs' EPSI Plan and APSI Plan investments during that period if the Court requests or if the Plaintiffs dispute statements contained herein regarding their EPSI and APSI Plan investments.

account to the Fixed Dollar Account. A true and accurate copy of a screenshot from the Alight recordkeeping system showing Mr. Antoine's initial investment election for his EPSI Plan account is attached hereto as Exhibit 1. Mr. Antoine's contributions to his EPSI Plan account have thereafter been allocated to the Fixed Dollar Account, per his initial investment election.

8. Lee Webber enrolled in the EPSI Plan in March 2013 and did so by his own choice. He was not automatically enrolled into the EPSI Plan. When Mr. Webber enrolled in the EPSI Plan, he affirmatively chose to allocate 100% of his contributions to his EPSI Plan account to the Fixed Dollar Account. A true and accurate copy of a screenshot from the Alight recordkeeping system showing Mr. Webber's initial investment elections for his EPSI Plan Account is attached hereto as Exhibit 2. Mr. Webber then made various changes to his EPSI Plan account investment allocations over time. For example, on or about August 21, 2013, Mr. Webber chose to no longer allocate 100% of his contributions to his EPSI Plan account to the Fixed Dollar Account, and instead chose to allocate 24% of his contributions to the Fixed Dollar Account with the remainder allocated to other investment options then-available in the EPSI Plan. Mr. Webber then changed the percentage of his contributions to his EPSI Plan account allocated to the Fixed Dollar Account several times, electing to invest between 0% and 100% of his contributions in the Fixed Dollar Account until approximately the first quarter of 2016, when he ceased making contributions into the EPSI Plan.

9. Anthony Medici enrolled in a Plan in April 2010 and did so by his own choice. He was not automatically enrolled into that Plan. When Mr. Medici enrolled in that Plan, he affirmatively chose to allocate 15% of his contributions to his Plan account to the Fixed Dollar Account, and 85% to other investment options available in that Plan at the time. A true and accurate copy of a screenshot from the Alight recordkeeping system showing Mr. Medici's initial

investment elections is attached hereto as Exhibit 3. Prior to December 2014, Mr. Medici chose to no longer allocate any portion of his contributions to his Plan account to the Fixed Dollar Account. Therefore, from at least December 2014 until the first quarter of 2020, when Mr. Medici ceased contributing to his Plan account at all, no portion of the contributions he made were allocated to the Fixed Dollar Account, per his investment elections.

10. Joseph Bendrihem enrolled in a Plan in December 2008 and did so by his own choice. He was not automatically enrolled into that Plan. When Mr. Bendrihem enrolled in that Plan, he affirmatively chose to allocate 20% of his contributions to the Plan to the Fixed Dollar Account and 80% to other investment options available in the Plan at the time. A true and accurate copy of a screenshot from the Alight recordkeeping system showing Mr. Bendrihem's initial investment elections is attached hereto as Exhibit 4. Mr. Bendrihem then made various changes to his Plan account investment allocations over time. For example, from approximately October 15, 2014 to March 10, 2015, he did not allocate any of his contributions to the Plan to the Fixed Dollar Account. On or about March 11, 2015, Mr. Bendrihem chose to resume allocating a portion of his contributions to the Plan to the Fixed Dollar Account. Mr. Bendrihem then changed the percentage of his contributions to his Plan account allocated to the Fixed Dollar Account several times, electing to invest between 10% and 35% of his contributions to the Fixed Dollar Account until approximately the fourth quarter of 2017, when he ceased making contributions into the Plan.

11. Larry Gilbert enrolled in the EPSI Plan in May 2006 and did so by his own choice. When Mr. Gilbert enrolled in the EPSI Plan, he affirmatively chose to allocate 100% of his contributions to the MainStay Income Manager Fund. A true and accurate copy of a screenshot from the Alight recordkeeping system showing Mr. Gilbert's initial investment

elections is attached hereto as Exhibit 5. After May 2006, he affirmatively elected to change his EPSI Plan investment allocations and chose to invest in the Fixed Dollar Account, in addition to other investment options available in the EPSI Plan. Mr. Gilbert changed the percentage of his contributions to his EPSI Plan account allocated to the Fixed Dollar Account several times, electing to invest between 55% and 100% of his contributions to the Fixed Dollar Account from approximately the fourth quarter of 2014 until approximately the second quarter of 2017, when he ceased making contributions into the EPSI Plan.

12. Rafael Musni enrolled in the APSI Plan in December 2014 and did so by his own choice. He was not automatically enrolled, and the APSI Plan had no automatic enrollment feature at the time. When Mr. Musni first enrolled in the APSI Plan, he affirmatively chose to allocate all of his contributions to his APSI Plan account to investments other than the Fixed Dollar Account. A true and accurate copy of a screenshot from the Alight recordkeeping system showing Mr. Musni's initial investment elections is attached hereto as Exhibit 6. Mr. Musni then chose for the first time to allocate a portion of his contributions to his APSI Plan account to the Fixed Dollar Account in August 2016. At that time, he elected to allocate 19% of his contributions to his APSI Plan account to the Fixed Dollar Account. He thereafter changed the percentage of his contributions allocated to the Fixed Dollar Account several times, and last contributed to his APSI Plan account balance in the first quarter of 2019.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 15, 2021.



Maria J. Mauceri